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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-925**

In re the Estate of:
Ahmed Omar Abdullahi, Deceased.

**Filed February 23, 2010
Affirmed in part, reversed in part, and remanded
Klaphake, Judge**

Ramsey County District Court
File No. 62-PR-07-1019

Patrick Chinedu Nwaneri, Nwaneri and Associates, PLLC, Eagan, Minnesota (for appellant Jimate Waqo)

John E. Trojack, West St. Paul, Minnesota (for respondent Said O. Abdullahi)

Considered and decided by Klaphake, Presiding Judge; Peterson, Judge; and Shumaker, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

This appeal involves the district court's determination of the heirs of Ahmed Abdullahi, who died intestate on September 5, 2007, and appointment of decedent's brother, Said Abdullahi, as personal representative of decedent's estate. On appeal, Jimate Waqo, who appeared as objector during the probate proceedings, challenges the district court's (1) appointment of Said Abdullahi as personal representative, (2) determination that decedent did not divorce his first wife, Hawo Mahad, and (3)

determination that appellant failed to prove that she was married to decedent at the time of his death. Appellant also claims that the district court demonstrated improper bias in handling the case. Because we conclude that the evidence supports the district court's (1) appointment of Said Abdullahi as a proper personal representative, (2) determination that decedent was married to Hawo Mahad, and (3) determination that decedent was not married to appellant, we affirm as to those issues. We also observe no evidence of district court bias in the probate proceedings. We reverse as to the district court's determination of decedent's heirs and remand for appointment of a guardian ad litem to represent their interests, however, because the record shows that the interests of decedent's nonmarital children were not represented during the probate proceedings.

D E C I S I O N

Our scope of review in this case is limited. Appellant failed to move for amended findings or a new trial, and under those circumstances, our review of procedural issues is limited to whether the evidence supports the district court's findings and whether the findings support its conclusions of law. *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 310 (Minn. 2003). "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district court] to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01. "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted). This court reviews the record in the light most favorable to

the district court's judgment and will not disturb the court's findings when there is reasonable evidence to support them. *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999).

Appointment of Personal Representative

Hawo Mahad, decedent's wife who resides in Kenya, nominated Said Abdullahi, who lives in Minnesota, to serve as personal representative of decedent's estate. Under Minn. Stat. § 524.3-414(b) (2008), the district court "shall . . . make a proper appointment" of a personal representative. "The district court has discretion to determine suitability of a personal representative, and that determination will not be reversed absent an abuse of discretion." *Estate of Martignacco*, 689 N.W.2d 262, 269 (Minn. App. 2004), *review denied* (Minn. Jan. 26, 2005). In appointing Said Abdullahi, the district court expressed some reservations about his "qualifications to serve," and the record shows that family relations are strained. The court addressed this concern by requiring Said Abdullahi to post a surety bond and by ordering a supervised administration of decedent's estate. Under these circumstances, the district court did not abuse its discretion by appointing Said Abdullahi as personal representative of decedent's estate.

Determination of Decedent's Spouse

Given our limited scope of review, we will only briefly address the district court's evidentiary decisions with regard to the determination of decedent's spouse. The parties agree and there is record evidence, including a marriage certificate, that decedent and Hawo Mahad were married in 1997 in Kenya. Appellant offered a divorce certificate to establish that decedent and Mahad divorced in Kenya on March 1, 1999, but the district

court rejected this evidence for several reasons. The court concluded that the divorce certificate was not properly authenticated because it lacked a sworn statement by a person properly authorized by the laws of Kenya to attest to the authenticity of the document, and because the document contained many internal inconsistencies. The document stated that the divorce certificate was not issued until 2006, when the parties purportedly divorced in 1999, and by its terms, the divorce was “revocable.” Further, the document contradicted an invalid divorce certificate that had been offered by appellant earlier in the proceedings. Because this evidence supports the district court’s findings regarding the validity of decedent’s marriage to Hawo Mahad, we decline to disturb the court’s determination that decedent was legally married to Hawo Mahad at the time of his death.

Appellant also challenges the district court’s determination that she failed to prove that she was also legally married to decedent at the time of his death. Appellant offered a non-authenticated marriage certificate showing that she and decedent were married in Kenya on March 5, 1999, which the district court rejected. The court also found inadequate the circumstantial evidence appellant offered to establish the alleged marriage, including that she and decedent lived together, had two children together, and ran a business together until the time of his death. Evidence offered by Said Abdullahi established that the parties did not live together, that decedent was not the biological father of at least one of appellant’s two children, and that the decedent and appellant did not run a business together. Some of Said Abdullahi’s claims were corroborated by other evidence, including that decedent and appellant did not have a valid marriage certificate,

that decedent's driver's license listed an address other than appellant's, and that decedent was not listed as the father on appellant's first child's birth certificate.

A marriage may be proved by circumstantial evidence. *See* Minn. Stat. § 602.02 (2008) (allowing evidence of “general repute, or of cohabitation as married persons, or any other circumstantial or presumptive evidence” to establish fact of marriage). But in a civil action, a party who has the burden of proof must prove its case by a preponderance of the evidence. *See Carpenter v. Nelson*, 257 Minn. 424, 427, 101 N.W.2d 918, 921 (1960). Appellant had the burden to prove that she was decedent's “surviving spouse” in order to obtain a share of his intestate estate. Minn. Stat. § 524.2-102 (2008). We conclude, as did the district court, that appellant offered insufficient evidence to prove that appellant was a surviving spouse.

Judicial Bias

Appellant further asserts that the district court showed bias against her in the probate proceedings. She makes various allegations about the district court's partiality towards respondent as shown by its statements and rulings during the three probate hearings that culminated in its decision. We reject this claim for two reasons. First, appellant does not support her claim of judicial bias with any references to the record or other legal support. *See State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (refusing to address issue “in the absence of adequate briefing”); *Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (refusing to address allegations that lack legal analysis or citation). Second, having reviewed the record, including the probate hearing transcripts, we observe no evidence of

partiality on the part of the district court judge. To the contrary, the district court should be commended for its extreme patience and tolerance in the management of this case. Appellant's claim of bias is without merit.

Determination of Heirs

Our inquiry does not end there, however. While the parties contested the validity of decedent's marriages to three women during the probate proceedings, there are at least four children known or alleged to be decedent's biological children. Our review of the record prompts us to address, in the interests of justice, the issue of the representation of decedent's heirs in the probate proceedings. *See* Minn. R. Civ. App. P. 103.04 (allowing appellate court to "take . . . action as the interest of justice may require").

The district court had authority to determine matters relating to distribution of decedent's estate, which included the determination of his legal heirs. Minn. Stat. § 524.1-302(a) (2008). As decedent died intestate, his estate was to be divided according to law between his surviving spouse and his surviving descendants, which include his children. *See* Minn. Stat. §§ 524.1-201(5), .2-102 (2008).

The district court also had the authority "[a]t any point" to "appoint a guardian ad litem to represent the interest of a minor" "if the court determine[d] that representation of the interest otherwise would be inadequate." Minn. Stat. § 524.1-403(4) (2008). Here, the record shows that the interests of decedent's claimed nonmarital children were underrepresented. The hearings nearly exclusively addressed the interests of three putative spouses, but only Hawo Mahad was determined to be a spouse of decedent, and only her child was found to be a legal heir of decedent. The other children who may be

issue of decedent could have proved their relationship to decedent by simple genetic testing, and it is clear that their interests were not adequately protected or pursued during the probate proceedings. *See Martignacco*, 689 N.W.2d at 266-68 (recognizing that biological evidence, such as genetic testing, and other circumstantial evidence may be used to establish paternity of nonmarital children for purposes of intestate succession). For this reason, we reverse the district court's decision with respect to any claimed nonmarital children and remand the issue of the heirship of decedent's nonmarital children to the district court for appointment of a guardian ad litem and further proceedings. The court may appoint more than one guardian ad litem if it determines that the interests of any such children are adverse.

Affirmed in part, reversed in part, and remanded.